IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 21ST JULY 2006 / 30TH ASHADHA,1928

TRC.No. 45 of 2002()

TA.994/1999 of S.T.A.T.ADDL.BENCH,ERNAKULAM DT.6.6.2001
.....

PETITIONER:

M/S. SARA SPICES,
KIZHAKKAMBALAM, ALUVA, REPRESENTED BY ITS MANAGING PARTNER, BOBBY M.JACOB.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS:

THE STATE OF KERALA, REPRESENTED BY THE GOVERNMENT PLEADER, HIGH COURT OF KERALA, ERNAKULAM.

BY GOVERNMENT PLEADER

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 21/07/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.924/2002 IN OP. NO.45/2002

DISMISSED

21.7.2006 **SD/ C.N.RAMACHANDRAN NAIR, JUDGE**

SD/- K.M.JOSEPH, JUDGE

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C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

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T.R.C. Nos.45 of 2002

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Dated this the 21st day of July, 2006.

JUDGMENT

Ramachandran Nair, J.

The T.R.C. is filed against the order of the Tribunal sustaining disallowance of exemption claimed under Section 5(3) in respect of black pepper supplied by the petitioner for export by a Delhi firm by name Lucky Exports. We have heard Sri.K.P.Dandapani, counsel appearing for the petitioner and the Special Government Pleader Sri.V.V.Asokan, appearing for the respondent.

2. The assessment involved is for the year 1994-95 and the item in respect of which exemption is claimed and rejected is black pepper which is an item when purchased in the State is taxable at the point of last purchase in the State as provided under Entry 107 of the First Schedule to the KGST Act. The facts on record disclose that petitioner on instruction from the exporter namely, Lucky Exports at New Delhi, shipped the goods through Cochin Port. The petitioner raised invoice on the Delhi exporter and obtained H form with which exemption is claimed from sales tax. This was rejected by the Assessing Officer and confirmed in two rounds of appeal on the ground that the last purchase which is subject to tax is not the transaction on which exemption is claimed by the petitioner. Since Section 5(3) of the KGST Act provides for exemption on penultimate sale or purchase preceding the actual export sale, it was for the exporter to claim

exemption on purchase from the petitioner which in this case happens to be the last purchase of pepper in Kerala which is the point of levy of tax on the item under the First Schedule to the Act as stated above. However, since exporter has no such claim and petitioner after purchase shipped the goods in terms of the exporter's instruction, petitioner's purchase happens to be the last purchase of pepper in the State which attracts levy of tax is the case of the Department. On facts, the Assessing Officer as well as the appellate authorities found that after the last purchase in the State, the petitioner sold the goods to the exporter and on their behalf petitioner shipped the goods from Cochin to the foreign buyer. However, H form produced by the petitioner only helps to support claim of exemption on petitioner's sale to the exporter which is not the point of levy of tax on the commodity and therefore, H form obtained by the petitioner on petitioner's sales to the exporter does not serve the purpose of claiming exemption under Section 5(3) of the Act. In fact the sale and the obtaining of H form against it from the exporter go against the petitioner's case of agency purchase on behalf of the exporter put forward by counsel appearing for the petitioner who produced copy of the agency agreement between the petitioner and the exporter before us which does not provide for any consideration to the petitioner, even though it is stated that petitioner is appointed as agent for the exporter for purchase of materials details of

which are also not disclosed in the agreement. In the circumstances and in the absence of any evidence before the Tribunal to establish agency transaction, petitioner is rightly declined exemption claimed under Section 5(3) by the Assessing Officer and by the appellate authorities including the Tribunal. Unless a transaction of agency is established with additional requirement that the transaction between the principal and the agent does not amount to sale in terms of explanation 5 to Section 2(21) of the KGST Act, exemption could not be granted on the ground of agency. We also find the Tribunal has relied on decisions of this court in M/S.K.V.MOOSAKOYA & CO. V. STATE OF KERALA (1998) 6 KTR 61 and in M/S.SOVEREIGN SPICES & OTHERS V. STATE OF KERALA (1998) 6 KTR 385 in support of their decision that petitioner is not entitled to exemption as the last purchase of pepper is not proved to be qualified for exemption under Section 5(3) of the CST Act. Even though counsel for the petitioner has relied on the decision of the Supreme Court in COMMISSIONER OF SALES TAX V. LEATHER FACTS CO. (1987) 66 STC 91, we find that is a case of exemption claimed by the exporter who was the last purchaser of commodity namely dressed hides and skins. On the other hand, this is a case where petitioner is the seller of goods to the last purchaser which is taxable at the point of last purchase in the State. The other decision relied on by the counsel

namely, CONSOLIDATED COFFEE LTD. V. COFFEE BOARD (1980) 46 STC 164, also do not support on facts a case for exemption for the petitioner in this case. In the circumstances, the T.R.C. fails and we dismiss the same.

C.N.RAMACHANDRAN NAIR
Judge

K.M.JOSEPH
Judge

pms

C.N.RAMACHANDRAN NAIR &
K.M.JOSEH, JJ.

T.R.C. No.45 of 2002

JUDGMENT

Dated 21.7.2006